

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 28 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAVID K. LEWIS,

Plaintiff - Appellant,

v.

DERRAL G. ADAMS; et al.,

Defendants - Appellees.

No. 08-15681

D.C. No. 1:05-CV-00173-LJO-
DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

David K. Lewis, a California state prisoner, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

that his due process rights were violated in connection with the confiscation of a television set. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hawkins v. Risley*, 984 F.2d 321, 323 (9th Cir. 1993) (per curiam). We affirm.

The district court properly granted summary judgment based on the doctrine of issue preclusion because Lewis's due process claims were previously litigated and decided on the merits in a state habeas proceeding. *See In re Lewis*, 03W0051B, slip op. at 1-2 (Cal. Super. Ct. March 12, 2004); *Silverton v. Dep't of Treasury*, 644 F.2d 1341, 1347 (9th Cir. 1981) (holding that a state habeas proceeding decided on the merits precluded a section 1983 action in federal court).

The district court did not abuse its discretion by allowing defendants to renew their motion for summary judgment because "an order denying a motion for summary judgment is generally interlocutory and subject to reconsideration by the court at any time." *Preaseau v. Prudential Ins. Co. of Am.*, 591 F.2d 74, 79-80 (9th Cir. 1979); *see also Knox v. Sw. Airlines*, 124 F.3d 1103, 1106 (9th Cir. 1997) (rejecting contention that successive motions for summary judgment were impermissible).

AFFIRMED.